

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

CAROLINE PALENCIA CABUAG

Case No. 2012-504

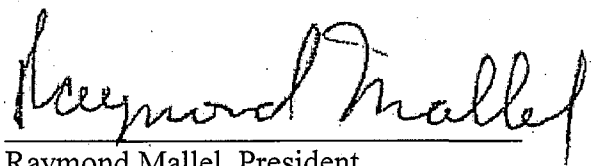
Respondent

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary order for Public Repeval is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **September 14, 2012.**

IT IS SO ORDERED **August 16, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

13 **CAROLINE PALENCIA CABUAG**
14 **955 Merced River Road**
Chula Vista, CA 91913

15 Respondent.

Case No. 2012-504

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL

[Bus. & Prof. Code § 495]

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
22 Board of Registered Nursing. She brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Amanda Dodds, Senior Legal Analyst.

25 2. Respondent Caroline Palencia Cabuag (Respondent) is represented in this proceeding
26 by attorney Brett F. Sherman, Goyette & Associates, whose address is: 2366 Gold Meadow Way,
27 Suite A, Gold River, CA 95670.

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3. On or about May 31, 2011, Respondent filed an application dated May 26, 2011, 2010, with the Board of Registered Nursing to obtain a Registered Nurse License.

JURISDICTION

4. Statement of Issues No. 2012-504 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on February 24, 2012. A copy of Statement of Issues No. 2012-504 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 2012-504. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reprimand.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2012-504.

9. Respondent agrees that her Registered Nurse License application is subject to denial and she agrees to be bound by the Board of Registered Nursing (Board)'s Disciplinary Order below.

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1 registered nurse license, Respondent shall, by way of letter from the Board's Interim Executive
2 Officer, be publicly reprovod. The letter shall be in the same form as the letter attached as Exhibit
3 B to this stipulation.

4 **ACCEPTANCE**

5 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
6 Reproval and have fully discussed it with my attorney, Brett F. Sherman. I understand the
7 stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated
8 Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently,
9 and agree to be bound by the Decision and Order of the Board of Registered Nursing.

10 DATED: 03/16/12 Carole Cabuag
11 CAROLINE PALENCIA CABUAG
Respondent

12 I have read and fully discussed with Respondent Caroline Palencia Cabuag the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
14 for Public Reproval. I approve its form and content.

15 DATED: 3/16/12 Brett Sherman
16 BRETT F. SHERMAN
Attorney for Respondent

17 **ENDORSEMENT**

18 The foregoing Stipulated Settlement and Disciplinary Order for Public Reproval is hereby
19 respectfully submitted for consideration by the Board of Registered Nursing of the Department of
20 Consumer Affairs.

21 Dated: 3/28/12 Respectfully submitted,
22 KAMALA D. HARRIS
23 Attorney General of California
24 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
25 Amanda Dodds
26 AMANDA DODDS
27 Senior Legal Analyst
28 Attorneys for Complainant

SD2011801750

Exhibit A

Statement of Issues No. 2012-504

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
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3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
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Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. **2012-504**

13 **CAROLINE PALENCIA CABUAG**
14 **955 Merced River Road**
Chula Vista, CA 91913

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about May 31, 2011, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Caroline Palencia
24 Cabuag (Respondent). On or about May 26, 2011, Caroline Palencia Cabuag certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on October 3, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 493 of the Code states:

17 Notwithstanding any other provision of law, in a proceeding conducted by a
18 board within the department pursuant to law to deny an application for a license or to
19 suspend or revoke a license or otherwise take disciplinary action against a person who
20 holds a license, upon the ground that the applicant or the licensee has been convicted
21 of a crime substantially related to the qualifications, functions, and duties of the
22 licensee in question, the record of conviction of the crime shall be conclusive
23 evidence of the fact that the conviction occurred, but only of that fact, and the board
24 may inquire into the circumstances surrounding the commission of the crime in order
25 to fix the degree of discipline or to determine if the conviction is substantially related
26 to the qualifications, functions, and duties of the licensee in question.

27 As used in this section, "license" includes "certificate," "permit," "authority,"
28 and "registration."

8. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or
deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

....

(f) Conviction of a felony or of any offense substantially related to the
qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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1 (d) Any conviction or act subject to an order of registration pursuant to Section
2 290 of the Penal Code.

3 12. California Code of Regulations, title 16, section 1445 states:

4 (a) When considering the denial of a license under Section 480 of the code,
5 the board, in evaluating the rehabilitation of the applicant and his/her present
6 eligibility for a license will consider the following criteria:

7 (1) The nature and severity of the act(s) or crime(s) under consideration as
8 grounds for denial.

9 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
10 under consideration as grounds for denial which also could be considered as grounds
11 for denial under Section 480 of the code.

12 (3) The time that has elapsed since commission of the act(s) or crime(s)
13 referred to in subdivision (1) or (2).

14 (4) The extent to which the applicant has complied with any terms of parole,
15 probation, restitution, or any other sanctions lawfully imposed against the applicant.

16 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(January 8, 2009 Criminal Conviction for DUI on November 16, 2008)**

20 13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
21 of the Code in that she was convicted of a crime substantially related to the qualifications, duties,
22 and functions of a registered nurse. Said conviction would be a ground for discipline under
23 section 2761, subdivision (f) of the Code for a licensed registered nurse. The circumstances are
24 as follows:

25 a. On or about January 8, 2009, in a criminal proceeding entitled *People of*
26 *the State of California v. Caroline Palencia Cabuag*, in San Diego County Superior Court, case
27 number S225089, Respondent was convicted on her plea of guilty to violating Vehicle Code
28 section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent
or more, a misdemeanor. Respondent admitted and the court found true the special allegation that
Respondent's BAC was .15 percent or more. Respondent's guilty plea included the statement "I
drove a M.V. with a B.A.C. of .18 in SD CA." The plea agreement dismissed an additional count

of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol.

b. As a result of the conviction, on or about January 8, 2009, Respondent was granted five years summary probation. Respondent was further ordered to complete a three-month First Conviction Program, a MADD Victim Impact Panel, pay \$1,916 in fees, fines and restitution, and comply with standard DUI probation conditions. The court suspended \$916 of the imposed fines pending successful completion of probation.

c. The facts that led to the conviction were that at approximately 2:40 in the morning, on or about November 16, 2008, California Highway Patrol (CHP) officers were traveling southbound on Interstate 805 when they observed a vehicle in front of them weaving from side to side. The vehicle, driven by Respondent, continued down the freeway in a serpentine manner until the CHP officers conducted a traffic stop. Upon contact with Respondent at her driver's side window, the CHP officer detected a strong odor of an alcoholic beverage emitting from within the vehicle, Respondent's eyes were bloodshot and watery, and her speech was slow and slurred. When Respondent was asked to exit her vehicle, she did so very slowly and deliberately, with an unsteady gait. Respondent admitted consuming alcohol. Respondent was unable to complete a series of field sobriety tests as explained and demonstrated by the CHP officer. Respondent submitted two breath samples which were analyzed with a BAC of .178 and .173, respectively. Based on Respondent's objective symptoms of intoxication, her admission to consuming alcohol, and her performance on the field sobriety tests, she was arrested for driving under the influence of alcohol.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Dangerous Use of Alcohol)

14. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A) of the Code in that on or about November 16, 2008, Respondent used alcoholic beverages to an extent or in a manner that was dangerous and injurious to herself and the public when she operated a motor vehicle while significantly impaired by alcohol, as described in paragraph 13, above. Such conduct would be a ground for discipline under section 2762, subdivision (b) of the Code for a licensed registered nurse.

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Exhibit B

Letter of Public Reproval in Case No. 2012-504



August 16, 2012

Caroline Palencia Cabuag
955 Merced River Road
Chula Vista, CA 91913

RE: LETTER OF PUBLIC REPROVAL
In the Matter of the Statement of Issues Against:
Caroline Palencia Cabuag

Dear Ms. Cabuag:

On February 23, 2012, the Board of Registered Nursing, Department of Consumer Affairs, State of California, filed a Statement of Issues. The Statement of Issues alleged that you engaged in conduct that subjected your license application to denial under Business and Professions Code section 480, subdivisions (a)(1) and (a)(3)(A). On January 8, 2009, you were convicted in San Diego County Superior Court of driving under the influence of alcohol, and driving with a blood alcohol level of .15 percent or more.

Taking into consideration the length of time that has elapsed since your DUI arrest and conviction, the letters of reference you have provided, and evidence of compliance with your court-ordered programs and probation, and that there are other mitigating circumstances in this case that support the determination that you are safe to practice, the Board has decided that the charges warrant a public reproof.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Board of Registered Nursing, Department of consumer Affairs issues this letter of public reproof.

Sincerely,

Louise R. Bailey M.Ed., RN

LOUISE R. BAILEY, M.ED., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California